BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of:	
Numbering Resource Optimization	CC Docket No. 99-200
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	CC Docket No. 96-98

OPENING COMMENTS OF SUREWEST TELEPHONE

ON

PETITION OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND OF THE PEOPLE OF THE STATE OF CALIFORNIA FOR AUTHORITY TO IMPLEMENT SPECIALIZED OVERLAY AREA CODES

I. INTRODUCTION

Pursuant to the Public Notice issued by the Wireline Competition Bureau on October 16, 2003, and in accordance with 47 C.F.R. sections 1.415 and 1.419, SureWest Telephone ("SureWest") offers the following comments opposing the California Public Utilities Commission's ("CPUC") October 6, 2003 Petition for Authority to Implement Specialized Overlay Area Codes ("Petition"). With approximately 137,000 access lines, SureWest is the third largest incumbent local exchange carrier ("ILEC") in California, and the largest ILEC headquartered in California. SureWest, formerly known as Roseville Telephone Company, serves customers in the Sacramento metropolitan area, in the 916 area code.

By its Petition, the CPUC seeks FCC permission to implement two permanent, technology-specific area code overlays in California devoted exclusively to "non-geographic" or

"transparent" numbers other than cellular numbers. The proposed Northern and Southern California "specialized overlays" ("SO") would include all California numbers used for e-fax, automatic teller machines ("ATMs"), point of sale ("POS") services, pagers, auto telematics that provide cellular service (e.g. On-star), voice over internet protocol ("VOIP") services, dial-up numbers for internet service providers ("ISPs"), and lines for modems and fax machines used by business customers with 50 lines or more. The CPUC also seeks authority to order "take backs" of qualifying numbers in existing NPAs and a waiver of the 10-digit dialing requirement.

Although the FCC has lifted the absolute ban on "specialized overlays," the CPUC's unprecedented proposal does not meet the approval criteria outlined in the *Third Report and Order and Second Order on Reconsideration*, CC Docket Nos. 96-98 and 99-200, 17 FCC Rcd 252 (2001) (*"Third Report and Order"*). Since the proposed overlays would apply to many areas in the state that are not in need of area code relief, the CPUC's proposal exceeds the authority delegated to the states in the FCC's *Third Report and Order*. Even if it did meet the approval criteria outlined in the *Third Report and Order,* and even if it were properly authorized, however, the disadvantages of the proposal far outweigh its perceived advantages to number preservation. The "specialized overlays" would impose significant industry costs, generate substantial customer annoyance and confusion, and have a discriminatory impact on providers of non-geographic services. Implementing an overlay over such a wide geographic territory would also raise innumerable rating and routing issues, potential conflicts with number portability requirements, and a possibility for increased stranding of numbers in certain rate centers. Further, since an overlay of this type and magnitude has never before been attempted, the identifiable problems are probably just the "tip of the iceberg." For these reasons, SureWest urges the FCC to reject the CPUC's petition.

II. STATEWIDE "SPECIALIZED OVERLAYS" WOULD EXCEED THE CPUC'S DELEGATED AUTHORITY TO PROVIDE AREA CODE RELIEF

In the *Third Report and Order*, the FCC explicitly limited state authority to implement "specialized overlays" to "areas in which a state has properly determined that area code relief is needed." *Third Report and Order,* ¶80. Therefore, if not targeted to areas where numbering exhaust is imminent, a SO would exceed the CPUC's delegated authority to fashion area code relief. *See Third Report and Order*, ¶80.

While the 310 area code appears to be in dire need of area code relief, this is not true of the remaining 24 California area codes.[1] Rather than tailoring a specific solution to number exhaust in particular areas, the CPUC's proposal sweeps in the entire state. The overlays sought by the CPUC's petition are far broader than necessary to achieve the state's goals, and therefore the proposal exceeds the CPUC's proper authority. There is no need to subject the entirety of California's communities, customers, and carriers to the burdens and costs of "specialized overlays" if more targeted area code relief efforts will relieve the potential number exhaust faced only in a few areas.

Indeed, the only SO sanctioned by the FCC involved a showing of genuine need through the entirety of an overlay area. In an order adopted May 16, 2003, the FCC approved a SO covering both of the existing area codes in the state of Connecticut. *Memorandum Opinion and Order*, CC Docket No. 99-200, FCC 03-114 (2003) ("*Connecticut Overlay Order*"). In seeking permission for this overlay, the Connecticut Department of Public Utility Control demonstrated that both "the 203 and 860 area codes are projected to exhaust." *See Connecticut Overlay Order*

[1] California has 25 total area codes, and will add a new area code shortly to relieve number exhaust in the 909 area code. The 909 area code split was approved at the CPUC's November 13, 2003 meeting.

at ¶8. No such showing has been made in this case, rendering the CPUC's proposals for a statewide SO fundamentally illegitimate.

III. THE DISADVANTAGES OF THE PROPOSED "SPECIALIZED OVERLAY" FAR OUTWEIGH ITS POTENTIAL BENEFITS.

As mandated by the FCC, states seeking to implement a SO bear the burden to "demonstrate that the benefits will outweigh the costs of implementing the specialized overlay." *Third Report & Order* at ¶80. State commissions should evaluate the advantages and disadvantages of a SO in light of the following eight factors: (1) what technologies are to be included in the overlay; (2) what geographic area will be covered; (3) whether the overlay will be transitional; (4) if the overlay is transitional, when it will become an "all-services" overlay; (5) whether the proposal will include "take backs;" (6) whether 10-digit dialing will be used in the overlay; (7) whether the overlay and the underlying area codes will be subject to rationing; and (8) whether the overlay will cover areas in which pooling applies.

Although the CPUC's petition touches on each of these factors, the CPUC does not devote adequate weight to the many costs, burdens, and problems that would be raised by a "specialized overlay." As set forth below, the highly speculative benefits of the proposal are far outweighed by the significant number of inevitable difficulties.

A. The Proposal Would Generate Significant Costs and Administrative Difficulties for Carriers

Although the full cost of the proposed SO to carriers is difficult to measure, it is certain to be significant. As currently configured, carriers' networks do not distinguish between numbers based on how they are used. If carriers are required to assign "non-geographic" or "transparent" numbers to a separate area code, it would be necessary for carriers to develop procedures for

determining how a customer will use his assigned numbers. Upon service initiation, carriers would have to ask customers how they plan to use their numbers. Carriers would also have to ascertain whether the business customers are using more than 50 lines, and if so, how many of those numbers are being used for the designated overlay services. Answering these inquiries will further prolong the service initiation process, forcing carriers to devote additional resources just to address the more complex number assignment requirements. To administer the overlay, carriers would also have to develop policies and procedures for tracking and cataloguing customers' uses of numbers. Operation Systems Support ("OSS") and billing systems would need significant upgrades, and number assignment protocols would have to be updated to reflect the new overlay. A substantial statewide customer education effort would also have to be undertaken, with the enormous costs being borne by carriers, which in the end would be borne by California's telephone subscribers. Implementation of these massive SOs may also require significant investments by Neustar to ensure that the network remains reliable, and that calls continue to be routed properly. Of course, Neustar's costs are necessarily recouped from the industry, and ultimately, California's ratepayers.

If the CPUC's proposal to implement a "take-back" of existing numbers is granted, the problems for carriers would be magnified significantly. Massive campaigns to re-assign and re-program existing numbers in a separate area code would have to be orchestrated by carriers. The history of previous area code relief efforts demonstrates that customers throughout the state will strongly resist such a movement, creating additional administrative and customer service costs to carriers. Since the CPUC's proposal is for a statewide SO, these costs would be absorbed by all of California's carriers, and ultimately, California's ratepayers. In this time of economic

downturn and uncertainty, imposing additional costs on carriers and their customers could be particularly damaging to the California economy.

As the FCC has recognized, "take-backs have significant drawbacks and costs, which need to be considered in determining whether a specialized overlay should include take-backs." *Third Report & Order* at ¶88. Absent a "strong showing that the consumer and industry costs associated with take-backs are outweighed by the optimization benefits of the take-backs," the FCC generally disfavors retroactively reassigning numbers to a new "specialized overlay." *Id.* at ¶88. The CPUC has not – and cannot – make a showing sufficient to justify "take-backs."

B. Implementation of a "Specialized Overlay" Will Produce Widespread Costs, Frustrations, and Privacy Concerns for Consumers

The CPUC's proposal will undoubtedly provoke a major public outcry. Each time an area code has to be changed, customers face significant costs. They must inform their employees and business contacts of the new number. Business cards and promotional materials have to be reprinted. Radio, television, and other advertising must be updated. Websites have to be redesigned. Business vehicles with telephone numbers displayed have to be repainted or upgraded. PBX customers may require upgrades to allow the system to accommodate the new area code. Business customers operating on closed networks may require additional programming to ensure that 7-digit and 4-digit dialing capabilities continue to function properly. To avoid incurring these costs, customers may fraudulently represent to carriers how they intend to use their assigned numbers.

The proposed SO would also raise a host of privacy concerns. If the CPUC's proposal is adopted, customers would be forced to disclose to their carriers how they will use the numbers assigned to them. Many customers view information about their use of telecommunications

services as private, and would refuse to provide it. Moreover, a customer may not necessarily know how it will use particular numbers at the time of service initiation or at the time a new line is added. It is unclear how the carrier should respond to situations where customers refuse to disclose the use of their number. These difficulties are left unresolved by the CPUC's petition.

Customers have a reasonable expectation of privacy in this information that should not be violated, particularly not in exchange for the speculative benefits that the CPUC's proposal would provide. Indeed, in view of the state of California's and the CPUC's strong history of protecting customer privacy, this proposal mandating disclosures of private information from customers is a non sequitur. In California, privacy is a constitutionally-recognized individual right, designed to protect individuals from "contemporary society's accelerating encroachment upon personal freedom and security caused by increased surveillance and data collection." People v. Arno, 90 Cal.App.3d 505, 511 (1979). See also Cal. Const., Art. I. In recognition of the critical importance of privacy to consumers of telecommunications services, both the CPUC and the California Legislature have recently introduced proposals to adopt a telecommunications "Right of Privacy." See generally, CPUC Rulemaking R.00-02-004; see also California Assembly Bill 1329. As currently drafted, this Privacy Right would provide that telecommunications consumers have a "right to personal privacy, to have protection from unauthorized use of their records and personal information, and to reject intrusive communications and technology." July 24, 2003 Draft Decision of Commissioner Wood, R.00-02-004. If the CPUC's SO proposal goes forward, carriers would be forced to engage in precisely the sort of "intrusive communications" that are intended to be forbidden by the letter and spirit of the "Right to Privacy."

The arbitrary nature of the numbers assigned to the SO would raise other problems for customers. For example, it is unclear from the CPUC's petition exactly which services are "non-

geographic" or "transparent." Although the definitions are clear for certain categories of services, definitions of others are more elusive. What if a customer wants to use a fax machine with a phone attached to it? Does the possibility of making a phone call from the fax machine exclude it from the SO? Or does the possibility of sending a fax automatically force that number into the SO? What if the customer declares that the number will be used 60% of the time for voice telephony, and 40% of the time for faxing? As technologies continue to converge, and the lines between particular service offerings become blurred, it will be increasingly difficult for customers and carriers to determine which designation applies.

Applying the overlay to business customers' modem and fax lines could also invite significant disruption, particularly for business customers with approximately 50 lines. For example, if a business customer has 45 lines, and adds 10 more, all of the qualifying fax and modem lines in his business would have to be switched to the overlay area code. If the customer later drops the same 10 lines, would all of the customer's lines then be switched back to the underlying area code? Such an outcome would be unmanageable and would be unacceptable to the vast majority of business customers, if not all. To force customers to undertake the expenses of an area code change every time they fluctuate above or below the 50 line threshold would be clearly unreasonable.

The general public would also experience various forms of confusion about the SO. At least at the outset, customers may believe they have a wrong number when their call is directed to a fax machine, VOIP, or e-fax number in the specialized overlay. For example, if a customer of a Silicon Valley software manufacturer typically dials 650 to reach that business, the client will be surprised to receive a fax number from the same business designating a number outside of the 650 area code. This confusion could be particularly significant for out-of-state callers, who will

be even less educated about the CPUC's SO proposal than Californians. The confusion will certainly translate into lost business for those customers that are unlucky enough to have numbers in the SO. Businesses should not be forced to have different area codes for their telephones and their fax machines.

Furthermore, it would not be apparent to customers whether calling a number in the SO will be rated as a local call, a local toll call, or a long distance call. The very nature of the CPUC's proposal means that a number from the SO area code could be next door, 20 miles away, or hundreds of miles away. A customer in San Diego could unwittingly dial a Fresno number. Similarly, a Monterey customer could unexpectedly dial a number in Eureka or Redding. Customers are accustomed to using area code as a heuristic for assessing the anticipated charges to be incurred from a given phone call. When dialing into the SO, this guideline would be removed. Customers should not be put in a position to incur surprise long distance and toll charges when they believe they are dialing a local call. Of course, carriers would bear much of the burden of explaining and remedying this sort of customer confusion, which is certain to occur as a result of the CPUC's problematic proposal.

The customer annoyance from the SO will be further compounded if the proposal includes "take backs." As resistant as customers will be to disclosing the uses of their numbers to carriers upon service initiation, they will be even less cooperative if the carrier is attempting to retroactively alter the area code of certain numbers based on the customer's response. The inevitable customer disruption that would be imposed on all Californians by "take-backs" precludes the CPUC from making its required "strong showing" necessary to justify such "take backs." *Third Report & Order* at ¶88. The costs to customers far outweigh any benefit derived from "taking back" numbers currently assigned to the underlying California area codes.

The possibility of 10-digit dialing will further confuse the public. Whether or not the CPUC's request for waiver of the 10-digit dialing requirement is granted, implementation of a statewide SO would require modifications to customers' typical dialing patterns, resulting inevitably in agitation and ambiguity for the public. If the CPUC's petition is granted, then customers would be required to dial 10 digits to reach the SO or another area code, but could dial seven digits within their own area code. Since many of the fax, ISP, VOIP, and other numbers in the SO would appear to most customers to be physically *within* the customers' area codes, customers will find it confusing that they have to dial 10 digits to reach those numbers. For example, if a residential customer with traditional landline service wants to reach his next door neighbor who has a VOIP account, he will have to dial 10 digits. If he were to call that same individual on a traditional telephone, he would dial only seven digits. Similar confusion would arise if a business customer with 45 lines faxed something to a business customer with 55 lines. If the CPUC's waiver request is granted, a significant public education effort would have to be made to resolve customers' questions and concerns, and to train customers how to properly program their ISP lines and fax machines.

Alternatively, if the CPUC's petition is *not* granted, 10-digit dialing will be required for all calls in every area code in the state. Customers would be forced to dial ten digits regardless of whether they are making a local call, a toll call, or a call to the SO. As illustrated by the public outcry accompanying the CPUC's announced overlay of the 310 area code in 1999,[2] consumers are fiercely resistant to dialing 10 digits to reach numbers within their own area code. If 10-digit

[2] In 1999, the CPUC announced an "all services overlay" in the 310 area code, which would have required residents of the 310 area code in west Los Angeles to dial ten digits even for local calls. Due to the intense public opposition to the proposal, it was withdrawn.

dialing is part of these statewide SOs, the customer dissatisfaction with the proposal will be dramatic.

C. Forcing Providers of "Non-geographic" Services Into a Specialized Overlay Will Discriminate Against Certain Service Providers and Carriers.

The FCC has expressed continuing concern that service-specific overlays may place certain customers and service providers at a competitive disadvantage by segregating them in a separate area code. *Third Report & Order*, ¶71, ¶77. In particular, customers may be reluctant to order service from a particular carrier if they "do not have access to the numbers in the 'incumbent' area code." *Id.* at ¶71. As the FCC has recognized, SOs are particularly suspect where they include take backs, since certain providers are forced to "incur the cost and inconvenience of changing their numbers," while others remain in the underlying area code undisturbed. *Id.* at ¶77. The FCC has rejected previous "specialized overlays" based on the potential for discrimination. *Id.* at ¶78 (discussing rejection of the Ameritech proposal for a technology-specific overlay). If VOIP providers, ISPs, and paging companies are only allowed to issue numbers in the specialized overlay, they are likely to experience precisely this sort of discrimination. Permanent SOs run a greater risk of promoting discrimination than temporary SOs such as the one approved in Connecticut. See *Memorandum Opinion and Order* at ¶9.

Customers forced to use numbers in the specialized overlay could experience a similar sort of discrimination. In many instances, area codes act as a form of branding by creating associations between a business and the image it wants to convey in connection with its goods or services. For example, a Los Angeles talent agency might want a 323 area code to associate itself with Hollywood. A vineyard might desire a 707 number to demonstrate its northwest California (Napa /Sonoma) location. A software manufacturer might derive additional

legitimacy from being in the 650 (Silicon Valley) area code. A group of lobbyists might want a 916 number, to illustrate their proximity to Sacramento. Businesses will lose "local identity" as a result of having their number assigned outside the incumbent area code. This will be unacceptable to businesses who require such an identity, and could prove disastrous to them financially. If certain businesses are forced into the SO simply based on the number of lines they happen to have, they could be competitively disadvantaged.

D. The Establishment and Enforcement of the CPUC's Proposal Will Generate Significant Administrative Expenses, and Could Create Perverse Incentives For Carriers

To sort out all the possibilities and problems with this massive undertaking, the CPUC will have to put forth an extensive effort in coordinating with Neustar, carriers, customers, and assorted service providers. Additional resources would have to be expended in enforcing and investigating carrier practices under the SO proposal. These costs cannot be justified by the scant, speculative benefits that the SO might provide to number conservation.

Alternatively, if the CPUC fails to actively police the requirements of this proposal, carriers who follow the rules may find themselves at a competitive disadvantage to carriers who simply ignore the mandate to assign certain customers to the SO. Given the costs associated with the proposed SO, customers will already have incentives to avoid the CPUC's requirements. If given the opportunity, customers would flock to a carrier who would be willing to ignore the SO mandate. Absent a clearer statement from the CPUC as to how the SO requirements would be enforced, possibilities for regulatory arbitrage are certain to emerge.

E. The Proposal Conflicts with the Recent Movement Toward Number Portability and Transparency.

By restricting customers' abilities to change the uses of their numbers over time, the SO proposal would conflict with the FCC's recent policies in favor of increased number portability. In its November 7, 2003 *Memorandum Opinion and Order* requiring wireline-to-wireless local number portability ("LNP"), the FCC articulated a clear policy that customers should be able to "retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." *Memorandum Opinion and Order*, Docket No. CC 95-116, FCC 03-284 (2003). If a customer is forced to change his area code simply to use his number for faxing or internet access rather than voice telephony, the benefits of LNP would disappear. Further, the recent FCC guidelines on number portability have required carriers to remove all barriers to number porting. The CPUC's SOs would act as precisely such a barrier. In short, the FCC's LNP mandates would be defeated by the CPUC's proposal.

F. The Supposed Advantages of the "Specialized Overlay" Are Speculative At Best

Unlike many of the difficulties detailed above, the advantages of the SO are unclear. First, the SO would not address any pressing need for area code relief. The CPUC freely acknowledges that a SO will not prevent a split of the 310 area code, since that area code has been predicted by NANPA to exhaust by the fourth quarter of 2003.[3] Further, the CPUC voted on November 11, 2003 to split the 909 area code, the other area code in dire need of relief. In the

[3] Even if the CPUC believed that this proposal could avoid a 310 area code split, the FCC specifically recommends against such a course of action: "SOs should not be implemented when the underlying NPA has a projected life span of less than one year." *Third Report & Order* at ¶85.

absence of a particular set of area codes that will benefit from the SO, there is no justification for imposing the disruption and cost of the SO on the entire state.

Since the CPUC has not adequately assessed the demand for the services to be assigned to the SOs, it is impossible to predict the impact that the SOs will have on number conservation. The CPUC's petition presents no information about the current and future utilization for the services to be included in the SO. Indeed, this information is likely not known, since the majority of providers of the listed services are receiving telephone numbers directly from either wireline or wireless providers.

If the demand is too high, the SOs could be depleted within three or four years. For example, if the demand for VOIP service increases dramatically over the next few years, VOIP providers could fill up the SO very quickly. Alternatively, if demand is lower than expected, imposing a permanent technology-specific overlay in each of the existing NPAs might actually promote "number stranding," and thereby work against preservation of the NANP. The demand for the services to be assigned to the SOs is unknown, and could potentially be very small in certain areas for certain carriers. Even if numbers are assigned in thousand-number blocks as proposed by the CPUC, many numbers could be stranded in the SO. The temporary nature of the Connecticut SO minimized the potential for stranding, since it will eventually include all providers. See *Memorandum Opinion and Order* at ¶9. This safety mechanism is not present in the California proposal, making it significantly more suspect. Before the CPUC is permitted to embark on this very costly, complex, and likely unpopular undertaking, it should more thoroughly investigate the potential demand for the services to be placed into the SOs.

On balance, the disadvantages of the proposed SO far exceed the potential that the SO will contribute substantially to preservation of the NANP. The CPUC's petition should be rejected.

IV. GIVEN THE COMPLEXITY INVOLVED IN A STATEWIDE "SPECIALIZED OVERLAY," UNFORESEEN PROBLEMS ARE LIKELY TO ARISE.

The CPUC itself acknowledges that it "cannot today anticipate every issue nor propose a solution to unknown problems." *CPUC Petition* at p. 4 It is precisely these "unknown problems" which may pose the greatest obstacles to implementation of the CPUC's proposal. Nothing of this nature or scope has been attempted before. The implementation of three additional trunk groups at each California switch may have some unforeseen impact on network reliability, capacity, or even the operation of E911. Further, as technologies continue to proliferate, the categorization of services as "geographic" or "non-geographic" may become even more difficult.

V. CONCLUSION

Before a state can implement a "specialized overlay," the FCC's *Third Report and Order* requires that state to demonstrate both a pressing need for area code relief, and that the benefits of the proposal outweigh the costs. The CPUC can show neither in this case. A perceived need for generalized area code relief in California cannot justify imposing the costs and burdens of an SO on carriers, customers, and consumers statewide. The CPUC's proposal runs the risk of various forms of discrimination against certain technologies and service providers. It would virtually eliminate the benefits of LNP, and holds the possibility of increased "number stranding." In light of these difficulties, and in light of the many difficulties with this proposal

that, by the CPUC's own admission, cannot be reasonably foreseen, the CPUC's petition should be rejected.

Respectfully submitted,

E. GARTH BLACK
MARK P. SCHREIBER
SEAN P. BEATTY
PATRICK M. ROSVALL

By: Patrick M. Rosvall
Patrick M. Rosvall

COOPER, WHITE & COOPER LLP
201 California St., 17th Floor
San Francisco, CA 94111
Phone: 415-433-1900
Fax 415-433-5530

Attorneys for
SureWest Telephone

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